

PART 7501—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Sec.

- 7501.101 Purpose.
- 7501.102 Definitions.
- 7501.103 Waivers.
- 7501.104 Prohibited financial interests.
- 7501.105 Outside employment.
- 7501.106 Additional rules for certain Department employees involved in the regulation or oversight of Government sponsored enterprises.

AUTHORITY: 5 U.S.C. 301, 7301, 7351, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.203(a), 2635.403(a), 2635.803, 2635.807.

SOURCE: 61 FR 36248, July 9, 1996, unless otherwise noted.

§ 7501.101 Purpose.

In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the Department of Housing and Urban Development (HUD or Department) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635. Employees are required to comply with 5 CFR part 2635, this part, and any additional rules of conduct that the Department is authorized to issue.

§ 7501.102 Definitions.

For purposes of this part, and otherwise as indicated, the following definitions shall apply:

Affiliate means any entity that controls, is controlled by, or is under common control with another entity.

Agency designee, as used also in 5 CFR part 2635, means the Associate General Counsel for Human Resources Law, the Assistant General Counsel, Ethics Law Division, and the HUD Field Office Assistant General Counsels; the Inspector General, for employees assigned to the Office of the Inspector General; and the General Counsel, Office of Federal Housing Enterprise Oversight, for employees assigned to the Office of Federal Housing Enterprise Oversight.

Agency ethics official, as used also in 5 CFR part 2635, means the agency designees as specified above.

Assistance means any contract, grant, loan, subsidy, guarantee, cooperative agreement or other financial assistance under a program administered by the HUD Secretary, and includes “assistance” awarded by the Department that is competitively redistributed to a second tier of applicants or awardees. The term does not include single family mortgage insurance provided under a program administered by the Secretary.

Designated Agency Ethics Official (DAEO) means the General Counsel of HUD or the Deputy General Counsel (Operations) in the absence of the General Counsel.

Employment means any compensated or uncompensated form of non-Federal employment or business relationship, including self employment, involving the provision of personal services by the employee. It includes, but is not limited to, personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee, teacher or speaker. It includes writing when done under an arrangement with another person for production or publication of the written product.

Security means all interests in debt or equity instruments. The term includes, without limitation, secured and unsecured bonds, debentures, notes, securitized assets and commercial paper including loans securitized by mortgages or deeds of trust and securities backed by such instruments, as well as all types of preferred and common stock. The term encompasses current and contingent ownership interests including any beneficial or legal interest derived from a trust. Such interest includes any right to acquire or dispose of any long or short position in such securities and also includes, without limit, interests convertible into such securities, as well as options, rights, warrants, puts, calls and straddles with respect thereto. The term shall not, however, be construed to include deposit accounts.

§ 7501.103 Waivers.

The Designated Agency Ethics Official may waive any provision of this part upon finding that the waiver will not result in conduct inconsistent with 5 CFR part 2635 or otherwise prohibited by law and that application of the provision is not necessary to ensure public confidence in the impartiality and objectivity with which the Department's programs are administered. Each waiver shall be in writing and supported by a statement of the facts and findings upon which it is based and may impose appropriate conditions, such as requiring the employee's execution of a written disqualification statement.

§ 7501.104 Prohibited financial interests.

(a) *General requirement.* This section applies to all HUD employees except special Government employees who are not "covered employees" as defined in § 7501.106(b)(1) of this part. Except as provided in paragraph (b) of this section, an employee, or an employee's spouse or minor child, shall not directly or indirectly receive, acquire or own:

(1) Securities issued by the Federal National Mortgage Association (FNMA) or securities collateralized by FNMA securities;

(2) Securities issued by the Federal Home Loan Mortgage Corporation (FHLMC) or securities collateralized by FHLMC securities;

(3) Federal Housing Administration debentures or certificates of claim;

(4) Stock or another financial interest in a multifamily project or single family dwelling, cooperative unit, or condominium unit, which is owned or subsidized by the Department, or which is subject to a note or mortgage or other security interest insured by the Department, except to the extent that the stock or other interest represents the employee's principal residence. Employees who wish to purchase a Department-held property as a principal residence must adhere to the procedures established by the Assistant Secretary for Housing for the administration of the property disposition program set forth in HUD Handbook 4310.5;

(5) Any Department subsidy provided pursuant to Section 8 of the United

States Housing Act of 1937, as amended, (42 U.S.C. 1437f) to or on behalf of a tenant of property owned by the employee. However, an employee may receive such a subsidy when:

(i) The employee acquires without specific intent, as through gift or inheritance, a property which at the time of acquisition has a tenant receiving such a subsidy, but only as long as that tenant continues to reside in the property;

(ii) An incumbent tenant who has not previously received such a subsidy becomes the beneficiary thereof, but only if there is no increase in that tenant's rent upon the commencement of subsidy payments other than normal annual adjustments; or

(iii) The tenant is the parent, child, grandchild, or sibling of the employee, but only if there is no increase in that tenant's rent upon the commencement of subsidy payments other than normal annual adjustments; or

(6) Any direct creditor interest in a mortgage insured by the Department.

(b) *Exception to prohibition for certain interests.* Nothing in this section prohibits an employee, or the spouse or minor child of an employee, from acquiring, owning, or controlling:

(1) An interest in a publicly traded or publicly available investment fund which, in its prospectus, does not indicate the objective or practice of concentrating its investments in residential mortgages or securities backed by residential mortgages, except those of the Government National Mortgage Association (GNMA), and the employee neither exercises control nor has the ability to exercise control over the financial interests held in the fund;

(2) A limited partnership interest in a partnership which has at least 5,000 partnership interests, and no more than 25% of the gross value of the partnership interest constitutes projects subject to HUD held or insured mortgages or projects currently receiving the benefit of HUD subsidies; or

(3) Mortgage insurance provided pursuant to section 203 of the National Housing Act (12 U.S.C. 1709) on the employee's principal residence and any one other single family residence.

(c) *Reporting and divestiture.* An employee must report, in writing, to the

appropriate agency ethics official, any interest prohibited under paragraph (a) of this section acquired prior to the commencement of employment with the Department or without specific intent, as through gift, inheritance, or marriage, within 30 days from the start of employment or acquisition of such interest. Such interest must be divested within 90 days from the date reported unless waived by the Designated Agency Ethics Official in accordance with § 7501.103.

§ 7501.105 Outside employment.

(a) *Prohibited outside employment.* Subject to the exceptions set forth in paragraph (b) of this section, HUD employees, except special Government employees, shall not engage in:

(1) Employment involving active participation in a business dealing with or related to real estate or manufactured housing including but not limited to real estate brokerage, management and sales, architecture, engineering, mortgage lending, property insurance, appraisal services, construction, construction financing, land planning, or real estate development;

(2) Employment with a person, other than a State or local government, who engages in lobbying activities concerning Department programs or who is required to report expenditures for lobbying activities or register as a lobbyist under 42 U.S.C. 3537b or similar statutes which require the registration of persons who attempt to influence the decisions of officers or employees of the Department;

(3) Employment as an officer or director of a person who is a Department-approved mortgagee, a lending institution or an organization which services securities for the Department; or

(4) Employment with the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Home Loan Bank System or any affiliate thereof.

(b) *Exceptions to employment prohibitions.* The prohibitions set forth in paragraph (a) of this section do not apply to serving as an officer or a member of the Board of Directors of:

(1) A Federal Credit Union;

(2) A cooperative or condominium association for a housing project which is not subject to regulation by the Department or, if so regulated, in which the employee personally resides; or

(3) An entity designated in writing by the Designated Agency Ethics Official.

(c) *Prior approval requirement.* (1) Employees, except special Government employees, shall obtain the prior written approval of an Agency Ethics Official before accepting compensated or uncompensated employment:

(i) As an officer, director, trustee, or general partner of, or in any other position of authority with, either a for-profit or non profit organization which directly or indirectly receives assistance from the Department.

(ii) With a State or local government; or

(iii) In the same professional field as that of the employee's official position.

(2) Approval shall be granted unless the conduct is inconsistent with 5 CFR part 2635 or this part.

(d) *Voluntary services.* Subject to the restrictions and requirements contained in the conflict of interest laws, 5 CFR part 2635, and this part, employees are encouraged to volunteer their personal time to nonprofit organizations.

NOTE TO § 7501.105: An employee assigned to serve in an official capacity as the Department's liaison representative to an outside organization is not engaged in an outside activity to which this section applies. Notwithstanding, an employee may be assigned to serve as the Department's liaison representative only as authorized by law, and as approved by the Department under applicable procedures.

§ 7501.106 Additional rules for certain Department employees involved in the regulation or oversight of Government sponsored enterprises.

(a) The following rules apply to certain Department employees whose duties involve the regulation or oversight of Government Sponsored Enterprises, specifically the Federal National Mortgage Association (FNMA) and the Federal Home Loan Mortgage Corporation (FHLMC). This section is in addition to §§ 7501.101 to 7501.105.

(b) *Definitions.* For purposes of this section, the following definitions are applicable:

(1) Except as provided in paragraph (b)(2) of this section, “covered employee” means all employees in the Office of Federal Housing Enterprise Oversight and employees required to file a public or confidential financial disclosure report under 5 CFR part 2634 in:

(i) The Office of the HUD Secretary, with the exception of the Office of Lead-Based Paint Abatement and Poisoning Prevention;

(ii) The Office of the Assistant Secretary for Housing—Federal Housing Commissioner;

(iii) The Office of Financial Institutions Regulation in the Office of the Assistant Secretary for Policy Development and Research;

(iv) The Offices of Investigation, Program Standards and Evaluation, and Regulatory Initiatives and Federal Coordination within the Office of the Assistant Secretary for Fair Housing and Equal Opportunity;

(v) The Office of General Counsel’s Offices of Insured Housing, Government Sponsored Enterprises/Real Estate Settlement and Procedures Act Division in Finance and Regulatory Enforcement, Legislation and Regulations, and the Fair Housing Enforcement Division;

(vi) The Office of Inspector General;

(vii) The official superiors of the employees listed in paragraphs (b)(1)(iii), (b)(1)(iv) and (b)(1)(v) of this section;

(viii) Any other employee who is designated in writing by the Secretary, the Designated Agency Ethics Official, or the appropriate individual of Assistant Secretary rank, or his or her designee, to ensure compliance with the principles set forth in 5 CFR 2635.403 and who receives notice of such designation.

(2) The DAEO, upon recommendation of the appropriate individual of Assistant Secretary rank, may exclude in writing an employee otherwise designated as a “covered employee” under § 7501.106(b)(1)(i)–(vii) of this part if the employee’s official duties do not substantially involve the regulation or oversight of Government sponsored enterprises and ownership of interests prohibited by § 7501.106(c) would not cause a reasonable person to question the impartiality and objectivity with

which the Department’s programs are administered.

(3) *Mortgage institution* means mortgage bankers, mortgage brokers, banks, savings and loans, and other institutions or entities that originate, insure, or service mortgages that are owned or guaranteed by the Federal National Mortgage Association (FNMA) or the Federal Home Loan Mortgage Corporation (FHLMC).

(c) *Prohibited financial interests.* (1) Except as provided in paragraph (c)(2) of this section, a covered employee, or a spouse or minor child of a covered employee, shall not receive, acquire, or own securities of:

(i) A mortgage institution if more than 20 percent of the institution’s assets consist of mortgages;

(ii) A mortgage institution in which 20 percent or less of the institution’s assets consist of mortgages and more than 40 percent of the mortgages originated by the institution are issued, collateralized, sold or guaranteed by FNMA and/or FHLMC; or

(iii) A mortgage institution which services or insures mortgages if more than 20 percent of the gross income of such institution is derived from either or both of these activities.

(2) The prohibitions in paragraph (c)(1) of this section do not apply to ownership of securities held in a publicly traded or publicly available investment fund, or profit-sharing, retirement, or similar plan which in its prospectus or governing documents does not indicate the objective or practice of concentrating its investments in the financial services sector, and the employee neither exercises control nor has the ability to exercise control over the financial interests held in the fund.

(3) The mortgage institution’s most recent annual financial statement shall be used in determining the applicability of the prohibitions in paragraph (c)(1) of this section.

(d) *Restrictions arising from third party relationships.* If any of the entities listed below has securities that a covered employee would be prohibited from owning by paragraph (c) of this section, the employee shall report such interest to the appropriate Agency Ethics Official. The Agency Ethics Official may require the employee to terminate the

third party relationship, undertake an appropriate disqualification, or take other appropriate action determined to be necessary consistent with 5 CFR part 2635 and this part. This paragraph applies to a:

(1) Partnership in which the covered employee, or a spouse or minor child of the employee is a general partner;

(2) Partnership in which the covered employee, or spouse or minor child of the employee, individually or jointly holds more than a 10 percent limited partnership interest;

(3) Closely held corporation in which the covered employee, or spouse or minor child of the employee, individually or jointly holds more than a 10 percent equity interest;

(4) Trust in which the covered employee, or spouse or minor child of the employee, has a legal or beneficial interest;

(5) Investment club or similar informal investment arrangement between the covered employee, or spouse or minor child of the employee, and others; or

(6) Other entity in which the covered employee, or spouse or minor child of the employee, individually or jointly holds more than a 10 percent equity interest.

(e) *Prohibited outside employment.* Covered employees shall not engage in employment with or on behalf of the Fed-

eral National Mortgage Association, the Federal Home Loan Mortgage Corporation, a mortgage institution, or any of their affiliates.

(f) *Prohibited recommendations.* Covered employees shall not make any recommendation or suggestion, directly or indirectly, concerning the acquisition, sale, or divestiture of securities of FHLMC or FNMA.

(g) *Prohibited purchase of assets.* Covered employees, their spouses or minor children shall not purchase, directly or indirectly, any real or personal property from FHLMC or FNMA, unless it is sold at public auction or by other means which would assure that the selling price is the asset's fair market value.

(h) *Pre-existing interests.* Covered employees must report, in writing, to the appropriate Agency Ethics Official, any interest prohibited under paragraph (c) of this section acquired prior to either the commencement of employment as a covered employee or the effective date of this part, or acquired without specific intent, as through gift, inheritance, or marriage, within 30 days from the start of covered employment or acquisition of such interest. Such interest must be divested within 90 days from the date it is reported unless waived by the Designated Agency Ethics Official in accordance with § 7501.103.